Supreme Court, U.S.
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No. 97-221

In The

Supreme Court of the United States

October Term, 1996

PERRY S. SHERS,

Petitioner,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
A Municipal Corporation; FLOYD L. FARANO, Receiver,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of California

RESPONDENT CITY AND COUNTY OF SAN FRANCISCO'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The parties to this proceeding are as follows:

Perry S. Shers, Defendant and Petitioner.

Estate of Rose Shers, Defendant. The Estate of Rose Shers did not join in this Petition.

City and County of San Francisco, Plaintiff and Respondent.

Floyd L. Farano, Receiver and Respondent.

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OPINIONS BELOW

Petitioner Perry S. Shers and his parents (collectively, "the Shers") owned real property in San Francisco, which violated numerous housing and safety-related provisions of the San Francisco Municipal Code. Respondent City and County of San Francisco ("City") filed three lawsuits over the course of four years, to enforce its Municipal Code and get the Shers to abate the violations. The trial court issued an injunction in each case, ordering the Shers to bring their property into compliance with the Municipal Code.[1]

The Shers have filed ten appeals in this case. Shers' current Petition for Certiorari pertains to the last four. In an unpublished opinion, the California Court of Appeal, First District, Division Two, consolidated and dismissed these four appeals.[2] The California Supreme Court denied review of the Court of Appeal's decision.

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[1] The trial court subsequently consolidated the three cases.

[2] Because Petitioner's reproduction of the Court of Appeal's opinion contains numerous errors, we include that opinion as Appendix A for the Court's convenience.

STATEMENT OF THE CASE[3]

In February 1985, City filed an action to compel the Shers to correct 54 violations of the San Francisco Municipal Code in existence on their property (the "Property"). *City and County of San Francisco v. Shers*, 38 Cal.App.4th 1831, 1833 (1995). These violations included a number of life-safety hazards. By January 1992, the trial court had issued three injunctions; held 50 contempt hearings due to the Shers' noncompliance with the injunctions; and found Shers in contempt six times for failure to comply with the injunctions. On January 10, 1992, after a full hearing, the trial court appointed Richard Riley as receiver to abate the violations that still existed at the Property. The Shers appealed, and the Court of Appeal affirmed the appointment of the receiver. *City and County of San Francisco v. Shers*, No. A057755 (Ca. Ct. App., June 16, 1993).

Floyd Farano replaced Riley as receiver on November 22, 1993. *City and County of San Francisco v. Shers*, 38 Cal.App.4th 1831 (1995). On appeal by the Shers, the Court of Appeal affirmed Farano's appointment. (*Id.*) Ultimately, Farano was unable to find any means to accomplish the required rehabilitation of the Property other than selling it. Farano therefore asked the trial court

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[3] The Court of Appeal's opinion adequately sets forth the facts of this case for the purposes of that court's dismissal order. However, Shers' "Statement of the Case" in his Petition for Certiorari contains numerous misstatements of fact that could bear on the issues before the Court, should the Court grant certiorari. Being mindful of its duty to point out any misstatements in its brief in opposition to the petition for certiorari, we provide the following by way of clarification.

to approve a sale, which the court did on June 16, 1995. The Shers appealed; this is the first of the four appeals consolidated herein.

Following the completion of the sale, Farano moved the court to authorize disbursement of the net sale proceeds to satisfy his fees and costs. The trial court granted his motion. Again, the Shers appealed. This is the second of the four appeals consolidated herein.

Finally, after subsequent hearings, the trial court issued orders assessing the Shers for receivership expenses paid by the receiver and the City. In doing so, the trial court specifically found that the nature of the Shers' conduct necessitated the receivership, and substantially increased its cost and duration. Of course, the Shers appealed.[4]

The Court of Appeal consolidated these four appeals in its June 26, 1996 order.[5] The court also struck the briefs that the Shers had already submitted, and explicitly directed the Shers to the applicable rules regarding briefing on appeal. Further, the court warned the Shers that they may be subject to sanctions, either financial or in the form of dismissal, for failure to comply with the applicable appellate rules.

After briefing of the four appeals by the City and the receiver, the Court of Appeal consolidated the remaining two cases, and dismissed all four appeals as a sanction

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[4] These are the third and fourth of the four appeals consolidated herein.

[5] This order is not included in the Petition. We include it as Appendix B hereto for the Court's convenience.

for the Shers' "repeated and egregious violations of both (a) California Rules of Court, rules 13 and 15(a)[1] and (b) our June 1996 order." *City and County of San Francisco v. Shers*, Nos. A070697, A071314, A073550, A074262 (Ca. Ct. App., Nov. 21, 1996) (included as Appendix A, at A2). In addition, the Court of Appeal directed the clerk of the court to accept no more appeals from the Shers without prior express permission of the court.

On December 6, 1996, the Shers requested rehearing by the Court of Appeal. On December 20, 1996, the Court of Appeal denied rehearing. The Shers then requested review by the California Supreme Court, on December 31, 1996. Both the receiver and the City filed answers to the Shers' Petition for Review, and the Supreme Court denied the Petition on February 19, 1997.

The City respectfully requests that this Court deny the petition for writ of certiorari, seeking review of an unpublished decision of the California Court of Appeal.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO REVIEW THE DECISION OF THE CALIFORNIA COURT OF APPEAL

Under 28 United States Code Section 1257, an order of a state court of last resort declining to review a case is not a reviewable judgment. Instead, the reviewable judgment is that of the highest court possessing and exercising jurisdiction. Stern, Robert L., et al., Supreme Court Practice Sec. 3.13 (7th ed. 1993). In cases in which this

highest court dismisses the appeal due to a party's failure to conform to state rules of practice in perfecting the appeal, that order of dismissal will not support the Supreme Court's jurisdiction. *Newman v. Gates*, 204 U.S. 89, 94-95 (1907). In such circumstances, "no final judgment or decree in such court has been rendered . . . [and] the statutory prerequisite for the exercise in this case of the reviewing power of this court is wanting." *Id.* at 95.

That is exactly the situation in this case. The Court of Appeal acknowledged that dismissal was not a permissible remedy for an initial defective filing, but having found "no question but that all three of appellants' [second] briefs utterly fail to comply with rules 13 and 15 in several particulars",[6] the court legitimately dismissed the appeal.[7] Thus, the Court of Appeal never reached the merits of this case. As in *Newman*, such an order of dismissal does not support Petitioner's request for review by this Court.

Moreover, to justify review by this Court, a federal question must have been properly raised in the state courts, following the prescribed procedure. *Chesapeake & Ohio Railway Co. v. McDonald*, 214 U.S. 191, 192 (1909). The record of the case must demonstrate that the state

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[6] *City and County of San Francisco v. Shers*, Nos. A070697, A071314 (Ca. Ct. App., June 26, 1996 Order) (included as Appendix B, at A7).

[7] Petitioner seems to contend that "higher authority" exists which precludes dismissal as a sanction for a second defective brief. (*See* Petitioner's "Questions Presented", No. 4.) However, he never cites that authority. The cases support the Court of Appeal's action. *Berger v. Godden*, 163 Cal.App.3d 1113 (1985); *In Re Marriage of Green*, 159 Cal.App.3d 1163 (1984).

court considered the federal question sought to be reviewed; the petitioner cannot raise the federal question initially in this Court. *Id.* at 192-193.

Here, Shers does not, and cannot, make such a demonstration. Although he attempts in his "Questions Presented" to raise federal constitutional issues, the Court of Appeal's opinion and the record of this case confirm that the state court never considered, much less ruled on, those issues.

The Court of Appeal's decision does not support review by this Court.

II. THE PETITION FOR WRIT OF CERTIORARI PRESENTS NO GROUNDS FOR SUPREME COURT REVIEW

A principal purpose for which this Court uses its certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law. Sup. Ct. R. 10; *Braxton v. United States,* 500 U.S. 344, 347 (1991). A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Sup. Ct. R. 10.

Although Petitioner employs the language of constitutional concerns in his "Questions Presented", close scrutiny of his petition confirms that it raises no real

federal constitutional issues.[8] Certainly, Shers presents no conflict between courts. Further, those questions that can be deciphered relate primarily to factual issues relevant only to this case. Thus, Shers presents no grounds for review by this Court.

This Court has emphasized the importance of consistency "in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, **as distinguished from that of the parties,** and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70, 79 (1955) (citation omitted) (emphasis added). The "Questions Presented" supplied by Shers fall squarely into this category. By no stretch of the imagination can these questions be construed to involve principles of significant importance to the general population of the United States.

This Court should decline to consider this case pursuant to Rule 10.

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[8] *See, e.g.,* Petitioner's "Questions Presented", Nos. 4, 5, 6, 8.

CONCLUSION

For the reasons set forth in this opposition, the Petition for Writ of Certiorari should be denied.

Dated: September 5, 1997

Respectfully submitted,

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APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff and Respondent, v. PERRY SHERS, et al., Defendants and Appellants.	A070697, A071314, A073550, A074262 (San Francisco County Super. Ct. No. 903465)

I.

These are four related appeals, the seventh, eighth, ninth and tenth in a long-running dispute between appellants on the one hand and the City and County of San Francisco (CCSF) and a receiver appointed by the San Francisco Superior Court on the other. The dispute revolves around the prior ownership by appellants of certain apartment property at 511 Leavenworth Street, San Francisco, the lengthy, costly and time-consuming steps taken first by CCSF and then by two successive receivers to force appellants to rectify numerous municipal code violations on that property and then, when that could not be done, to sell the property and account for the costs of the sale and the receiver-enforced code compliance.

By our order of June 26, 1996 (June 1996 order), we consolidated the first two-numbered appeals. By this order we consolidate with them, and with each other, the last two numbered cases. For the reasons stated below, we dismiss all four appeals and, as a sanction for appellants' repeated and egregious violations of both (a) California Rules of Court, rules 13 and 15(a)[1] and (b) our June 1996 order, direct that the Clerk of this court accept no more appeals from these appellants without the prior express permission of this court.

II.

For seven years, beginning in 1985, CCSF authorities struggled to have appellants Perry Shers and his mother, Rose Shers, (together, the Shers or appellants) rectify over 50 municipal code violations on their property. On January 10, 1992, after three judgments ordering compliance, fifty contempt hearings for non-compliance, and six findings of contempt resulting in fines and incarceration, the superior court appointed a receiver to complete the necessary work.

Thereafter, and not counting the appeals encompassed by this order, the Shers filed six separate appeals from orders regarding the receivership. First, they appealed the appointment of a receiver to the property. (*City and County of San Francisco* v. *Shers* (June 16, 1993) A057755.) We affirmed. The Shers appealed an order approving the receiver's fees and costs and denying a

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[1] All further references to rules are to the California Rules of Court.

new trial on the issue. (*City and County of San Francisco* v. *Shers*, A061276.) They subsequently abandoned that appeal. The Shers next appealed an order appointing Floyd Farano as successor receiver to replace the original receiver, Richard Riley, after Riley's resignation; we affirmed that order in a partially published opinion. (*City and County of San Francisco* v. *Shers* (1995) 38 Cal.App.4th 1831.) The Shers then appealed the superior court's denial of their motion to terminate the receivership. (*City and County of San Francisco* v. *Shers*, A066031.) We granted CCSF's motion to dismiss on November 9, 1994. The Shers appealed from the superior court's order approving the receiver's plan for sale of the property. (*City and County of San Francisco* v. *Shers*, A067150.) We granted CCSF's motion to dismiss on March 8, 1995. The Shers' sixth appeal was from an order of the superior court declaring Perry Shers to be a vexatious litigant under Code of Civil Procedure section 391, subdivision (b)(3), and prohibiting him, pursuant to section 391.7 of that code, from filing any new litigation in propria persona without prior leave of that court; we affirmed that order in October 1995. (*City and County of San Francisco* v. *Shers*, A067102.)

Appeal Nos. A070697 and A071314, the first two of the four involved here, challenge two successive orders of the superior court, a June 1995 order authorizing the property to be sold by the receiver and an August 1995 order relating to the disbursement of the proceeds of that sale. Appeals Nos. A073550 and A074262 are from September and October 1995 orders of the superior court assessing receivership expenses paid by, respectively, the receiver and CCSF.

As noted above, our June 1996 order consolidated the two low-numbered cases, i.e., those relating to the sale and the disbursement of the proceeds thereof. We also did two other things via that order. First of all, pursuant to rule 18, we struck the appellants' opening briefs in both cases and their reply brief in No. A071314, but granted them leave to refile those briefs (albeit now in the consolidated case) within specified time limits. In so doing, we expressly noted that the basis for that portion of the order was the failure of those briefs "to comply with [r]ules 13 and 15(a)." Second, we went on in a later paragraph of that order to state unequivocally what we expected of appellants thereafter:

"4. Appellants attention is directed to the text of the applicable Rules on Appeal, including without limitation the following provisions of [r]ules 13 and 15(a):

> "Rule 13: 'The statement [of the case] shall be accurate and confined to matters in the record on appeal.'
>
> "Rule 15(a): 'The statement of any matter in the record shall be supported by appropriate reference to the record.'

"Appellants' continued failure to comply with these and other provisions of the Rules on Appeal may result in a dismissal of either or both of the referenced appeals (see this court's opinion in *Berger* v. *Godden* (1985) 163 Cal.App. [sic:3d] 1113), the imposition of sanctions (see [r]ule 26(a), California Rules of Court and *Alicia T.* v. [*County of Los Angeles*] (1990) 222 Cal.App.3d 869, 886), or both."

On August 12, 1996, the Shers refiled their "Appellants' Joint Opening Brief" in those two cases as well as an appendix thereto. Two days later, the Shers filed their opening brief and an accompanying appendix in appeal No. A074262; their opening brief in No. A073550 had been filed on June 18, 1996, eight days before our June 1996 order.

III.

First and foremost, it is obvious from even a cursory comparison of the Shers' August 12 filing in the two first consolidated cases (entitled "APPELLANTS' JOINT OPENING BRIEF") that what they have done is simply splice together, with few if any changes, the two separate "STATEMENT OF FACTS" sections from the opening briefs they filed before the cases were consolidated, i.e., *the precise briefs ordered stricken by our June 1996 order.*[2] Although we have not performed a word-by-word comparison of the three briefs, it would seem that, as far as the "STATEMENT OF FACTS" portions are concerned, the briefs are 99% identical. Thus, it is quite clear that the notation in our June 26 order that the earlier briefs were "stricken from the record for failure to comply with [r]ules 13 and 15 (a)" and our later citation of the key language of those rules was utterly, completely, flagrantly and contemptuously ignored by the Shers.

Separate and apart from that consideration, none of the briefs filed by the Shers in these cases comes within a

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[2] These briefs were filed on January 10 and April 9, 1996.

country mile of complying with the two quoted Rules of Court.

Eleven years ago, we stated our view of the law applicable in precisely this situation. In *Berger* v. *Godden* (1985) 163 Cal.App.3d 1113, 1117-1119 (*Berger*), we had (as here) stricken an appellant's opening brief for noncompliance with rules 13 and 15. There (as here) we allowed the appellant to refile his opening brief, but specifically warned him that, in the event of future noncompliance with the pertinent rules, " 'this appeal shall be dismissed.' " (*Id.* at p. 1117.) That appellant, as these appellants, ignored our warning and filed a patently noncomplying brief. We ruled that the appeal could be and was dismissed because, among other reasons, "the failure of appellant to file a brief in conformity with the rules after his initial brief was stricken for noncompliance with the rules. . . . " (*Ibid.*)

In so doing, we reviewed the history of the pertinent rule, rule 18, and noted that, in 1937, that rule was amended to delete language expressly authorizing dismissal of an appeal as a sanction for filing a defective brief. We concluded that, "with respect to an initial filing of a defective brief," dismissal was no longer a permissible remedy. (*Berger, supra,* 163 Cal.App.3d at p. 1118.) We held, however, that matters were different in the situation presented there (and here): "We hold that while rule 18 does contemplate that an appeal not be dismissed because a party has filed one brief which fails to comply with the rules, nothing in the rules precludes dismissal for failure to file a brief substantially in compliance with the rules after the appellate court has made an order striking one nonconforming brief with leave to file a new

brief. Obviously implicit in such an order is the directive that the new brief comply with the rules. The order in the present case expressly provided that if a new brief were not filed as specified, the appeal would be dismissed. When a new brief substantially fails to comply with the rules, as in the present case, the appellate court has both statutory and inherent power to dismiss the appeal. [¶] 'It is beyond dispute that "Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council." [Citations.]' As no statute or rule specifies a procedure to be followed upon the striking of an initial appellant's brief and the filing of a second (or subsequent) brief which fails to conform to the rules of court governing the preparation of briefs, this court may, in its discretion, dismiss an appeal in which such a brief is filed."[3] (*Id.* at pp. 1118-1119.)

That opinion, one explicitly cited to the Shers in our June 1996 order, governs here for there is no question but that all three of appellants' briefs utterly fail to comply with rules 13 and 15 in several particulars. We shall deal with those briefs (and their related appendices) in the order they were filed.

The first to be filed was on June 18, 1996, in appeal No. A073550. As noted, this filing preceded our June 1996

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[3] To the same apparent effect, and relying on our decision in *Berger*, is *Childs* v. *PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 986. (See also *Bernard* v. *Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

order by eight days. The appeal concerns an October 1995 order of the superior court assessing property sale costs incurred by the receiver against the Shers. The brief is 15 pages long and three of those pages contain a section entitled "STATEMENT OF FACTS." Contrary to the express mandate of rule 15(a), there is nary a "reference to the record" anywhere in those three pages. Which, a cynic might observe, is understandable when one refers to the sole supporting "record" filed in that case, the "APPELLANTS' JOINT APPENDIX TO AOB IN LIEU OF REPORTER'S AND CLERK'S TRANSCRIPTS" filed the same day. Aside from a copy of the docketing statement required by this court, that document contains only three documents: (1) a copy of the superior court order appealed from, (2) an Abstract of Judgment apparently served and filed by the receiver (although the copy in the "record" shows no filing stamp) reflecting the same sum assessed by the superior court order appealed from, (2) an Abstract of Judgment apparently served and filed by the receiver (although the copy in the "record" shows no filing stamp) reflecting the same sum assessed by the superior court's October 1995 order, and (3) a copy of a "supplemental" memorandum of points and authorities apparently filed in the superior court *by the Shers* (but, again, showing no filing stamp) in connection with the dispute over the assessment of costs and expenses of the sale of the Leavenworth Street property. *No other pleadings filed with the superior court relating to this issue are supplied.*

The next brief filed by the Shers was submitted on August 12, 1996. It will be recalled that this was in the now-consolidated two low-numbered cases (dealing with

the order of sale and the order disbursing the proceeds thereof). This brief was filed by the Shers in lieu of two opening briefs (and one reply brief) filed in the two cases before their consolidation and ordered stricken for non-compliance with rules 13 and 15(a) by our June 1996 order. As we have already described, upon examination it appears that this one August 12 brief is, for all practical purposes, simply a "spliced together" replica of the two stricken opening briefs in the unconsolidated cases. In any event, accompanying it was a 300 plus page appendix.

Approximately 15 of the 41 pages of this brief fall under two separate headings of "STATEMENT OF FACTS." But exactly twice in these approximately 15 pages is there any reference to the 300 plus page appendix. The first is at page 2 where, after a statement of a totally irrelevant (to this appeal) "fact," there is a single citation to the appendix with the promising add-on: "hereinafter in the style 'AOA, 120:1-5.' " Four lines later appears an "[*ibid.*]" citation *following which there is absolutely not a single citation to the "record" in the case in the entire 39 remaining pages of the brief*! To put the matter succinctly, a clearer case of a violation of the quoted part of rule 15 (a) is hardly imaginable.

The final brief filed by the Shers was their opening brief in appeal No. A074262; it was filed two days after the brief just discussed and less than two months after our June 1996 order. It dealt with yet another 1995 order of the superior court dealing with costs of the sale of the property. It is, again, effectively contemptuous of our June 1996 order. In the approximately eight pages of a section entitled "STATEMENT OF FACTS," there is not a

single citation to the 23 page appendix[4] filed with the brief.

There is yet another reason why we dismiss these appeals, and that implicates the other rule we cited to these appellants in our June 1996 order, rule 13. The relevant sentence of that rule, which we quoted in paragraph 4 of our order, says: "The statement [of the case] shall be accurate and confined to matters in the record on appeal." It is elemental that this rule requires that a party supply the appellate court something more than just a recitation of its contentions or facts in the record favorable to it. (See, e.g., *Sprague* v. *Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1027-1028.) More importantly, at least for present purposes, it emphatically does not permit a party to file a brief which contains immaterial, irrelevant or disrespectful material. (See *People* v. *Barry* (1957) 149 Cal.App.2d 646, 647.) These briefs, especially the two filed after our June 1996 order, are replete with such material.[5] None of it, of course, is supported by anything remotely resembling a record citation.

It would gain nothing to cite all of the disrespectful, scurrilous and ad hominem characterizations which fill

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[4] That appendix contains copies of exactly four (4) documents, including the Shers' Notice of Appeal, a Notice of Election of Use of Appendix, etc., in support of that appeal, a three-page superior court memorandum of points and authorities filed by CCSF counsel, and the identical Shers "supplemental" memorandum of points and authorities contained in the appendix to appeal No. A073550. Only the CCSF pleading shows a filing stamp.

[5] They are also replete with numerous mispellings, typographical errors, and convoluted syntax.

these briefs, but the following is a sampling: in their August 12, 1996, filing, the Shers repeatedly attack the trial judge, the Honorable Stuart Pollak, a most able jurist of the San Francisco Superior Court, for having displayed "hostility" toward them from the beginning, as having had them searched for weapons because of alleged death threats to him by Perry Shers, and as being biased against them in his rulings and orders. The CCSF authorities fare no better: Perry Shers was supposedly excluded from his building by those authorities at the behest of a "former girlfriend" (of precisely who we are not told), one of its attorneys wrote a "secret letter" regarding the Shers' permit applications, and one of its inspectors was alleged to be "under investigation . . . for abuses involving conflicts of interest and alleged extortion."

The two appointed receivers in the case fare worst under the Shers' diatribe, however: one or the other of them is repeatedly making "irregular" motions, trying to negotiate a settlement "secretly," "laughingly taunting Perry Shers . . . that [he] would get no justice from Judge Pollak," charging "grossly inflated fees," arranging "sweetheart sales," racing "undignified" to avoid settlement, and ultimately converting "the proceeds [from the sale of the property] to himself."

The August 14 filing is, if possible, even more scurrilous. Various and sundry people are accused of being "cocaine abusers" or "drug abusers," of suffering "paranoia," of having "previous mental institutionalizations," etc. Judge Pollak is again pilloried by name for having "apparent malicious retaliatory spite" against the Shers, and it is alleged that the property in question had been partially used "for prostitution and illegal drug abuse"

while under CCSF control. And on, and on, and on. It almost goes without saying that the numerous ad hominem references have little if any relevance to the narrow procedural issues involved in these four appeals. Rather, they are an obvious, if not a tiresomely redundant, effort by the Shers to portray themselves as nothing more than (a) folks who have no responsibility at all for their present predicaments and (b) victims of repeated conspiracies against them by miscellaneous evil people.

Neither this nor any other court has to put up with filings such as these. We especially do not because of the explicit warning to the Shers in our June 1996 order. Accordingly, these appeals and each thereof are dismissed for repeated non-compliance with rules 13 and 15(a). As a sanction for the continued violation of those rules, the Clerk of this court is directed not to accept any further appeals from these appellants in this or any related litigation without the prior written consent (via formal order) of the Presiding Justice of this court. (See rule 26(a); Code Civ. Proc., §§ 391, subd. (b) and 391.7, and *Alicia T.* v. *County of Los Angeles, supra,* 222 Cal.App.3d at p. 886.) Any application by appellants, or either of them, for relief from this order must be by double-spaced letter of no more than four (4) pages in length.

Haerle, J.

We concur:

_____

Kline, P. J.

_____

Lambden, J.

APPENDIX B

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff and Respondent, v. PERRY SHERS, ET AL., Defendants and Appellants.	)	A070697
CITY AND COUNTY OF SAN FRANCISCO, Plaintiff and Respondent, v. PERRY SHERS, ET AL., Defendants and Appellants.	)	A071314

BY THE COURT:

1. The appeals in Case Nos. A070697 and A071314 are hereby consolidated.

2. The appellants' opening brief in Case No. A070697 and the appellant's opening and reply briefs in Case No. A071314 are, pursuant to the provisions of Rule 28 (b), California Rules of Court, hereby stricken from the record for failure to comply with Rules 13 and 15 (a) os

[sic] said Rules. Appellants may refile said briefs (but only a single brief in Case No. A071314) within 45 days from the date of this order. Said date will not be further extended by this court, even pursuant to stipulation.

3. Respondent shall file its briefs in said cases with 30 days from the date of filing of appellants' briefs. Said date will not be further extended by this court, even pursuant to stipulation.

4. Appellants' attention is directed to the text of the applicable Rules on Appeal, including without limitation the following provisions of Rules 13 and 15(a):

> Rule 13: "The statement [of the case] shall be accurate and confined to matters in the record on appeal."
>
> Rule 15(a): The statement of any matter in the record shall be supported by appropriate reference to the record."

Appellants' continued failure to comply with these and other provisions of the Rules on Appeal may result in a dismissal of either or both of the referenced appeals (see this court's opinion in *Berger* v. *Godden* (1985) 163 Cal.App. 1113), the imposition of sanctions (see Rule 26 (a), California Rules of Court and *Alicia T.* v. *Superior Court* (1990) 222 Cal.App.3d 869, 886), or both.

Dated: JUN 26 1996 KLINE, P.J. P.J.